

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No.: **12-O-17697-PEM**
)
WILLIAM PAUL LUCKE,) **DECISION AND ORDER OF**
) **INVOLUNTARY INACTIVE**
Member No. 51030,) **ENROLLMENT**
)
A Member of the State Bar.)

In this matter, respondent William Paul Lucke (respondent) was charged with five counts of misconduct stemming from a single client matter. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on January 5, 1972, and has been a member since then.

Procedural Requirements Have Been Satisfied

On September 20, 2013, the State Bar properly filed and served an NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was returned to the State Bar as undeliverable.

In addition, respondent had actual notice of this proceeding. In November 2013, the State Bar made numerous attempts to contact respondent. These attempts included trying to reach respondent through his official membership records telephone and email. The State Bar also conducted a Westlaw search and identified an alternative address.

On November 19, 2013, the State Bar received a voicemail from respondent. That same day, the State Bar returned respondent's call and spoke with him. Respondent provided the State Bar with an alternative address and was advised that the State Bar would file a default motion on November 25, 2013. On November 19, 2013, the State Bar mailed a copy of the NDC to respondent at the alternative address he provided.

Respondent failed to file a response to the NDC. On November 25, 2013, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the deputy trial counsel declaring the additional steps taken to provide notice to respondent.

(Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on December 11, 2013. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On June 16, 2014, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has one other disciplinary matter pending;³ (3) respondent has one prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on July 14, 2014.

Respondent has been disciplined on one prior occasion.⁴ Pursuant to a Supreme Court order filed on April 30, 2010, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years, including a 60-day period of suspension. In this matter, respondent stipulated to four counts of misconduct stemming from two client matters, including failing to perform legal services with competence (two counts),

³ This matter—case nos. 07-O-10614 and 07-O-11539—was abated on January 21, 2010.

⁴ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence, and directs the Clerk to include copies in the record of this case.

failing to inform his client of a significant event, and failing to deposit and maintain client funds in his client trust account.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

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Count One – respondent willfully violated Rules of Professional Conduct, rule 3-110(A) (failure to perform) by failing to perform any legal services of value for his clients.

Count Two – respondent willfully violated Rules of Professional Conduct, rule 3-700(A)(2) (improper withdrawal) by failing to inform his clients that he had been placed on inactive status, failing to refund unearned fees, and failing to inform his clients that he would no longer be representing them.

Count Three – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to inform client of significant developments) by failing to inform his clients that he was placed on inactive status and would no longer be able to provide legal services for his clients.

Count Four – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate) by receiving and failing to respond to a State Bar investigative letter.

Count Five – respondent willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws) by holding himself out as entitled to practice law

when respondent was not an active member of the State Bar, in willful violation of Business and Professions Code, sections 6125 and 6126.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) respondent had actual notice of the proceedings prior to the entry of his default, as he was properly served with a copy of the NDC; was sent a courtesy copy of the NDC at an address provided by respondent; spoke to the State Bar over the phone; and was advised that the State Bar would be filing a default motion;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent William Paul Lucke be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to Shirley and Bryan Hewitt in the amount of \$13,140 plus 10 percent interest per year from January 25, 2010.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that William Paul Lucke, State Bar number 51030, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: September _____, 2014

Pat McElroy
Judge of the State Bar Court